



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 14 नवम्बर, 2023 / 23 कार्तिक, 1945

हिमाचल प्रदेश सरकार

वन विभाग

अधिसूचना

शिमला-2, 09 अक्टूबर, 2023

संख्या: एफ.एफ.ई-ए.(बी)2-2/2023.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस विभाग की अधिसूचना संख्या: एफ.एफ.

ई-ए(बी)2-1/2014, तारीख 06 अक्टूबर, 2016 द्वारा अधिसूचित हिमाचल प्रदेश वन विभाग, वन परिक्षेत्र अधिकारी, वर्ग -II (राजपत्रित), भर्ती और प्रोन्नति नियम, 2016 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात्:—

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश वन विभाग, वन परिक्षेत्र अधिकारी, गुप-बी भर्ती और प्रोन्नति नियम, 2023 है।

(2) ये नियम राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. उपाबन्ध—“क” का संशोधन.—2.(हिमाचल प्रदेश वन विभाग, वन परिक्षेत्र अधिकारी, वर्ग-II (राजपत्रित), भर्ती और प्रोन्नति नियम, 2016 (जिसे इसमें इसके पश्चात् “उक्त नियम” कहा गया है) के उपाबन्ध —“क” में:—

(क) स्तंभ संख्या 3 के सामने विद्यमान उपबंधों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“गुप-बी”

(ख) स्तंभ संख्या 4 के सामने विद्यमान उपबंधों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

(i) नियमित पदधारी (पदधारियों) के लिए पे बैण्ड:

“हिमाचल प्रदेश सिविल सेवाएं (संशोधित वेतन) नियम, 2022 के अनुसार पद के टाइम स्केल से संलग्न पे-मैट्रिक्स का लेवल (स्तर)—11.

(ii) संविदा पर नियुक्त कर्मचारी (कर्मचारियों) के लिए उपलब्धियां:

“हिमाचल प्रदेश सिविल सेवाएं (संशोधित वेतन) नियम, 2022 के अनुसार तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू लेवल (स्तर) के प्रथम कोष्ठ का 60: (साठ प्रतिशत)।”

(ग) स्तम्भ संख्या 15—क (IIa) और 15—क (VII) (क) के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

(II) संविदात्मक उपलब्धियां:

“संविदा के आधार पर नियुक्त वन परिक्षेत्र अधिकारी को रूपए 23,100/— की दर से समेकित नियत संविदात्मक रकम [जो तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू लेवल (स्तर) के प्रथम कोष्ठ का 60% (साठ प्रतिशत) होगी] संदत्त की जाएगी।”

(VII) (क) निबन्धन और शर्तें:

संविदा के आधार पर नियुक्त वन परिक्षेत्र अधिकारी को रूपए 23,100/— की दर से समेकित नियत संविदात्मक रकम [जो तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू लेवल (स्तर) के प्रथम कोष्ठ का 60% (साठ प्रतिशत) होगी] संदत्त की जाएगी।

(घ) उक्त नियमों से संलग्न उपाबन्ध —“ख” में:—

(i) शर्त संख्या 2 के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“(2) प्रथम पक्षकार की संविदात्मक रकम प्रतिमास रूपए 23,100 /— होगी [जो तत्स्थानी संवर्ग के पे-मैट्रिक्स के लागू स्तर (लेवल) के प्रथम कोष्ठ (सेल) का साठ प्रतिशत होगी]।”

आदेश द्वारा,

हस्ताक्षरित /—
(डॉ० अमनदीप गर्ग),
सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-A (B)2-2/2023, dated 09-10-2023 as required under Article 348 (3) of the Constitution of India].

FOREST DEPARTMENT

NOTIFICATION

Shimla-2, the 9th October, 2023

No. FFE-A(B)2-2/2023.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, is pleased to make the following rules further to amend the Himachal Pradesh, Forest Department, Range Forest Officer, Class-II (Gazetted) Recruitment and Promotion Rules, 2016 notified *vide* this Department Notification No. FFE-A(B)2-1/2014, dated 06th October, 2016, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh, Forest Department, Range Forest Officer, Group-B Recruitment and Promotion Rules 2023.

(2) These rules shall come into force from the date of its publication in the Rajpatra (e-Gazette), Himachal Pradesh.

2. Amendment of Annexure-“A”.—In Annexure-“A” of the Himachal Pradesh, Forest Department, Range Forest Officer, Class-II (Gazetted) Recruitment and Promotion Rules, 2016 (hereinafter referred to as said ‘rules’):—

(a) For the existing provision against Column No.3, the following shall be substituted, namely:—

“Group –B”

(b) For the existing provision against column No.4, the following shall be substituted, namely:—

(i) **Pay Band for regular incumbent(s).**—Level-11 of the pay matrix attached with time scale of the post, as per the H.P. Civil Services (Revised Pay) Rules, 2022.

(ii) **Emoluments for Contract Employee(s).**—60% of the first cell of the applicable level of pay matrix of the corresponding cadre, as per the HP Civil Services (Revised Pay) Rules, 2022.”

- (c) For the existing provision against column No. 15-A(II) and 15-A(VII) (a) the following shall be substituted, namely:—

(II) Contractual Emoluments:

The Range Forest Officer appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 23,100/- (which shall be 60% of the first cell of the applicable level of pay matrix of the corresponding cadre).

(VII) (a) Terms and Conditions:

The Range Forest Officer appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 23,100/- (which shall be 60% of the first cell of the applicable level of pay matrix of the corresponding cadre)."

- (d) In Annexure-B of Annexure-A of the said rules:—

- (i) For condition No.2 the following shall be substituted, namely:—

"2.The contractual amount of the FIRST PARTY will be Rs. 23,100/-per month (which shall be 60% of the first cell of the applicable level of pay matrix of the corresponding cadre)."

By order,

Sd/-
(Dr. AMANDEEP GARG, IAS),
Secretary (Forest).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 19th October, 2023

No. LEP-A003/28/2021-LEP.— In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 95/2023	Sh. Purshotam Kaushik	M/s Wincure Pharma	11-09-2023
2.	Ref. 144/2019	Sh. Devi Dayal	Dr. Y.S. Parmar University of Horticulture.	13-09-2023
3.	Ref. 179/2020	Sh. Het Ram	Lala Gauri Mal Butail Charitable Trust.	14-09-2023

4.	Ref. 82/2021	Sh. Surjeet Singh	M/s Penguin Electronics Ltd.	21-09-2023
5.	Ref. 86/2019	Sh. Hem Chand	Sh. Tek Chand & Anr.	25-09-2023
6.	App. 36/2021	Smt. Anita Devi	M/s Auro Spinning Mills	26-09-2023
7.	Ref. 97/2019	Smt. Nirmala Devi	The XEN, HPSEB, Solan & Anr.	27-09-2023

By order,

DR. ABHISHEK JAIN (IAS),
Secretary (Lab. & Emp.).

Ref. 95 of 2023

Sh. Purshotam Kaushik

V/s

M/s Wincure Pharma

11-09-2023

Present

: Petitioner in person

Sh. Prateek Kumar, Advocate with Shri Pawan Kumar Bansal,
Owner of the Respondent Company.

The matter has been amicably settled between the parties. As per the settlement the respondent company has paid a sum of Rs. 35,000/- (Thirty Five Thousand Only) to the petitioner today in the Court. To this effect, the statements of both the parties have been recorded separately and placed on record.

In view of the statements of the parties made before this Tribunal, I am satisfied that a lawful compromise has been effected between the parties. Therefore, nothing survive in the present reference petition, which is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

11-09-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 144/2019

Shri Devi Dayal

Versus

Dr. Y.S. Parmar University

13-09-2023

Present

: Petitioner in person.

Sh. H.R. Thakur Ld. Csl. for respondent

The petitioner *vide* separate statement stated that he do not want to continue the present case and statement of petitioner placed on record.

In view of the statement of the petitioner the case is dismissed as withdrawn. Therefore, nothing survive in the present reference petition, which is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
13-09-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF SH. KRISHAN KUMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 179 of 2020

Instituted on : 22-08-2020

Decided on : 14-09-2023

Het Ram s/o Shri Sarvan Dass, r/o V.P.O. Amarpur Sukri, Tehsil Ghumarwin, Distt. Bilaspur, H.P. . . *Petitioner.*

Versus

1. Lala Gauri Mal Butail Charitable Trust through its Managing Trustee, Butail Dharamshala, Shimla (H.P.).

2. Lala Gauri Mal Butail Charitable Trust through its Chairman, Butail Dharamshala Shimla (H.P.) . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent No.1 : Nemo

For the Respondent No. 2 Ex-parte

AWARD/O R D E R

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:—

“Whether termination of the services of Shri Het Ram s/o Shri Sarvan Dass, r/o V.P.O. Amarpur Sukri, Tehsil Ghumarwin, Distt. Bilaspur, H.P. *w.e.f.* 20.06.2017 by the (i)

Lala Gauri Mal Butail Charitable Trust through its Managing Trustee Sh. Kamal Butail s/o Sh. Tarlak Chand, Butail Dharamshala, Shimla, H.P. (ii) Lala Gauri Mal Butail Charitable Trust through its Chairman Sh. Joginder Butail, Butail Dharamshala, Shimla, without complying with the provisions of the Industrial Dispute Act 1947, is legal and justified? If not, what relief including reinstatement, amount back wages, past services benefits and compensation the above ex-worker is entitled to from the above management.”

2. The case of the petitioner is that the respondents Trust is a registered under the Indian Trust Act and is running under the name and style Lala Gauri Mal Butail Charitable Trust Dharamshala at Shimla. It has also establishment at Dhamandhri, Tehsil Theog, District Shimla having more than 15 employees at Shimla and other places. The applicant was appointed as bedding incharge in the year 1966 on monthly wages of Rs. 800/- and he continuously served with the respondents from the date of his appointment without any break. The salary of the applicant was enhanced from time to time and in the month of March 2017, the salary of the applicant was Rs. 5500/- per month. The applicant was informed by his mother that his father was not keeping well and due to this reason the applicant visited his native place to look after his ailing father and submitted the application accordingly to the respondents. After 15 days, the applicant also informed Shri Kamal Butail, the Managing Trustee of the Trust about the bad health of his father but he refused to accept his request. Then, the applicant had informed the same to Shri Joginder Lal Butail, Chairman of the Trust and Shri Brij Bihari Lal Butail, Secretary of the Trust and due to the bad health of the father of the applicant, he had not joined his duties up to 06.05.2017. When he came to join his duty on 06.05.2017, his joining was not accepted by the respondents and room was locked which was under his occupation and locks were broken by the respondent no. 1 and the luggage was also removed from that place which showed that his service were terminated in the month of May 2017 verbally.

3. Because his joining was not accepted by the respondents, which shows that his services were retrenched without following the provision of Section 25-F of the Industrial Dispute Act. No incidental benefits were paid to him by the respondents. Therefore, the act of the respondent was illegal and unjustified. After refusing the joining of the applicant, the trust engaged three persons in Butail Dharamshala, Shimla which clearly shows that the work and funds were available with the respondents. The applicant performed his duty to the entire satisfaction of his superiors without any casual leave and medical leave and he continuously served them from the year 1996. The applicant was not paid minimum wages by the respondents and they have also violated Article 21 of the Constitution of India. The respondents are liable to pay wages to the applicant @ Rs. 5500/- per month *w.e.f.* May 2017 till the date of re-engagement. The retrenchment of the service of the applicant may kindly be set aside and respondents be directed to re-engage the service of the applicant and they be also directed to pay minimum wages with EPF contribution in his favour.

4. Notice of the reference was given to the other parties. Ld. Csl. appeared on behalf of the respondent no.1 prayed time for filling reply, whereas despite having been served, none appeared on behalf of respondent no. 2, hence, was proceeded against *ex-parte*.

5. In the instant case, on the date of hearing neither the worker nor any Authorized Representative/ Advocate has appeared before this Tribunal despite having the knowledge of the present dispute as Shri Anirudh Verma, Advocate had appeared before this Court on previous date of hearing. Neither the Counsel of the petitioner had appeared nor the petitioner before this Court, which shows that the petitioner is not interested in pursuing his matter even neither the petitioner appeared nor his Advocate. Therefore, the present reference petition is answered in negative for

want of prosecution. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 14th Day of September, 2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Ref. 82 of 2021

Sh. Surjeet Singh

V/s

M/s Penguin Electronics Ltd.

With the consent of both the parties , this case has been taken up today at Camp Court, Nalagarh.

Present : Ms. Neetu Sharma, Advocate for petitioner

Sh. Rajiv Sharma, Advocate for respondent

The learned Counsel for the petitioner *vide* separate statement submitted that she do not want to pursue the present reference petition. The statement recorded separately and placed on record. In view of the statement, the present reference petition is dismissed as withdrawn. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
21-09-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF SH. KRISHAN KUMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 86 of 2019

Instituted on : 17-05-2019

Decided on : 25-09-2023

Hem Chand s/o Late Shri Geeta Ram, r/o Village Badwa, P.O. Shakrah, Tehsil Shimla,
Distt. Shimla, H.P. . . . *Petitioner.*

Versus

1. Sh. Tek Chand (A.E. Retd.) HPSML0008331000/ Government Contractor, r/o Chandra Willa, Thakur Bag, Annadaile, Shimla, H.P.

2. The Executive Engineer, IPH, Division-II, ISBT, Tutikandi, Shimla, HP.

... Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : None

For the Respondent No. 1 : Ms. Kalpana, Ld. Advocate

For the Respondent No. 2 : Ms. Hemlata, ADR. Advocate

AWARD

The following reference petition has been, received from the Appropriate Government under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:—

“Whether demand of Sh. Hem Chand, Fitter STP, Lalpani, Shimla, r/o Village Badwa, P.O. Shakrah, Tehsil & District Shimla, H.P., through the President & General Secretary, S.T.P. Contract Workers Union, Shimla, 9, Bawa Building, The Mall Shimla-171003 before (i) Er. Tek Chand, Engineers and Contractor, r/o Chandra Villa, Thakur Bag, Annadale, Shimla H.P. & (ii) The Executive Engineer, Sewerage Division, Tutikandi, Municipal Corporation, Shimla, H.P. to pay him wages of Electrician instead of Fitter, is legal and justified? If yes, what relief and arrear of back wages, the above workman is entitled to from the above employers?”

2. The case of the petitioner is that the claimant/ petitioner had joined the STP, Lalpani Shimla in the year 2006, as Skilled Fitter having Two years Diploma in Mechanical Fitter from ITI Shimla. Before joining the STP, Lalpani, the petitioner was having more than 11 years experience of working as Fitter Mechanical and Electrician in different firms and factories. The petitioner was assigned additional work of the Fitter at STP Lalpani till January 2016. The petitioner was paid ₹ 13,000/- per month as monthly salary for discharging the services of Fitter Mechanical and Electrician by the former contractor Sh. Akshay Doger. The petitioner discharged his duty as per the instruction of the incharge at STP Malyana, Shimla, STP Summer Hill and STP Lalpani, Shimla and he rendered uninterrupted service to the satisfaction of his supervisor. From February 2016, the STP was overtake by IPH Department from private contractor Shri Akshay Dogar. The petitioner had been paid Rs. 242/- per day as fixed by the Government as daily wages of Fitter.

3. The fixed Government daily wages for Electrician is Rs. 290/- per day. Since the appointment of the petitioner was as Fitter Mechanical and he is discharging the services of the Electrician, since 2006 as there was no other skilled employee engaged by the STP Administration. The petitioner was paid Rs. 13,000/- per month for discharging the services of Fitter and Electrician after overtaking of the STP by the IPH. Thereafter, the department again outsourced the Sewerage Treatment Plants to new Contractor Sh. Tek Chand. The petitioner is being paid daily wages at the lower side whereas the petitioner has been directed to perform his earlier duty of fitter and electrician at present. The petitioner is working as Foreman and is drawing daily wages Rs. 371/- per day. After over taking by the IPH Department and thereafter, outsourcing the same to the

Contractor Sh. Tek Chand, the petitioner has not get fair wages for the work done by him. Whereas he was compelled to perform the duties of electrician alongwith the fitter and was paid the wages as fixed for fitter only. The petitioner is issued a legal notice to the contractor and advance copy was given to the Executive Engineer, IPH to the effect that he has been deprived by the contractor/respondents of wages of Electrician instead of Fitter since 01.04.2016 to 31.06.2017 @ ₹ 290/- and ₹ 300/- per day for the period from July to August as per approved rates and had sustained financial loss of ₹ 27038/- during that period.

4. On merits, it is admitted that the petitioner is a skilled fitter having 2 years diploma but denied that he joined STP Lalpani in the year 2006 and before joining STP he was having more than 11 years' experience. It is also denied that the petitioner was getting ₹ 13,000/- as monthly salary. Sh. Akshay Doger, contractor has not been arrayed as party. It is also submitted that the claimant was engaged as a fitter and was being paid wages of fitter only. He was never engaged as electrician nor was assigned any additional work to him. The petitioner was rightly paid the wages of Fitter and he was never compelled to perform to the Electrician. No notice was served nor any advance copy was given to the respondent no. 2. The claim of the petition is frivolous one and deserves for dismissal.

5. Respondent no. 2 filed the separate reply. It is admitted that the respondent no. 2 has been merged with the company incorporate under the Indian Companies Act under the name and style of Shimla Jal Prabandhan Nigam Limited *w.e.f.* 06/2018. The petitioner was employee of the private respondent no. 1 Contractor. The Additional General Manager, Sewerage Division, Jal Prabandhan Nigam Limited, Shimla requested the private respondent no. 1, to intimate in what capacity the petitioner was engaged by him and *vide* letter dated 17.02.2020, he has intimated that the petitioner has been engaged as Fitter from outsource and only performing the duty of the Fitter and accordingly, the wages are paid to him. Contractor respondent no. 2 has engaged the petitioner as Fitter and no other work is provided to him. The petitioner has never raised any issue on this account prior to the filing of the present petition. The petitioner was engaged by respondent no. 2 and present petition is not maintainable. The respondent no. 1 has furnished the details of EPF contribution deposited by him. The respondent no. 2 also prayed for the dismissal of the claim petition.

No rejoined was filed. On the pleading of the parties, the following issues are framed by my Ld. Predecessor on 22.11.2022:—

1. Whether the demand of the petitioner through the President and General Secretary of the workers union therefore the respondents to pay him back wages of Electrician instead of Fitter, without complying with the provisions of the Industrial Dispute Act, 1947, is illegal and unjustified? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter, while discussing issues for determination, my aforesaid under:—

Issue No. 1

Redundant

Issue No. 2 Redundant

Relief Reference answered in negative as per the operative part of the award.

REASONS FOR FINDINGS

ISSUES NO. 1 & 2.

8. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

9. The condition of the petitioner is that he was employed as a Fitter but had performed the duties of an Electrician instead a Fitter. He made the demand that he is entitled for the wages of Electrician from 01.04.2016 to 30.06.2017 @ of Rs. 290/- and Rs. 300/- per day for the period of 01.07.2017 to 31.08.2017 which comes to Rs. 27,038/-.

10. The case was listed for the evidence of the petitioner since 20.02.2023 but despite granting three opportunities the petitioner failed to lead any evidence, hence, *vide* order dated 03.07.2023, one more opportunity was granted to the petitioner to lead the evidence in support of his case being the last opportunity but despite that the petitioner evidence was not present nor his counsel paid his appearance nor any reason was assigned by anyone. Since, there is no evidence on record on the allegation raised by the petitioner it appears that the petitioner is not interested to proceed further with this case as no evidence has been led by him. Therefore, keeping in view the facts & circumstances of the present case, I have no other alternative but to answer the aforesaid issues as redundant.

RELIEF

11. In view of my above findings on issues no. 1 & 2, in the absence of any evidence, both issues are decided redundant. Hence, the claim petition is dismissed. Accordingly the present reference is answered in negative.

12. Let a copy of this award be sent to the appropriate Government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 25th Day of September, 2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. KRISHAN KUMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 36 of 2021

Instituted on : 04-03-2021

Decided on : 25-09-2023

Anita Devi w/o Shri Pramod Chaubey, r/o House No. 8, Village Bhupnagar, Tehsil Baddi, Distt. Solan, H.P.-173205. . . *Petitioner.*

Versus

M/s Auro Spinning Mills (A Unit of Vardhman Textiles Ltd.) through Factory Manager, Sai Road (Industrial Area) Baddi, Distt. Solan, Himachal Pradesh- 173205 . . *Respondent.*

Petition under section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rakesh Manta, Advocate

For the Respondent : Sh. Rajeev Sharma, Advocate

ORDER/AWARD

By this order, I shall hereby dispose off the preliminary issue as framed by my Ld. Predecessor in view of the law laid down by Hon'ble Apex Court in **Copper Engineering Limited V/s Sh. P.P. Mundhe 1975 SCC (L&S) 443**, as is evidence from the zimni order dated 02.03.2022, which reads as under:—

- (i) Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper?
- (ii) Relief

2. Briefly stated facts necessary for the disposal off the above preliminary issue as disclosed by the petitioner in her petition are that she was engaged by M/s Auro Spinning Mills in the year 2016 and promoted in the capacity of Spinning Operator on 01.02.2017 and her last drawn salary was Rs. 9000/- per month. On 21.06.2020, during duty hours the supervisor of the company namely Shri Ashok tried to molest her as he grabbed her breast and when the petitioner resisted then he pushed her due to which she sustained injuries in her arm and hip. Thereafter, the petitioner reported the matter to Sh. T.K. Singh (Seat Officer) but he supported the molester and further the matter was reported to Sh. Mohan Jhangra (Factory Manager) and other officials of the company namely Sh. Tribhuvan Yadav, but they instead of taking any action against the culprit rather told her that if, she want to work in the company then have to tolerate of such things. It is normal in the premises. Since, no action was taken, thereafter the matter was reported to the local Police on help line no. 112 but the police did not take any action consequently the petition filed preliminary complaint in the court of Ld. Additional Chief Judicial Magistrate, Nalagarh, Distt. Solan, H.P. and as per the direction of the Hon'ble Court an FIR No. 41/2020 stand registered at Women Police Station Baddi on 08.10.2020. The respondent company instead of taking action against the accused levelled false, frivolous and baseless allegations of misconduct against the petitioner. The management did not allow the petitioner to continue her services *w.e.f.* 22.06.2020 without any reason. Later on it's revealed that the petitioner was put under suspension *w.e.f.* 22.06.2020 on the false charges of misconduct. Similarly, the petitioner raised the Industrial Dispute by serving a demand notice on 25.06.2020 and conciliation proceeding were initiated by the Labour-cum-Conciliation Officer, Baddi but the respondent management on the basis of false and frivolous charges initiated an inquiry against the petitioner and appointed Sh. Hardev Sharma, Advocate as Enquiry Officer, who conducted the inquiry as per the wishes of the company, which cannot be termed to be fair and impartial. The Joint Labour Commissioner, Himachal Pradesh on the basis of the report dated 21.08.2020, as submitted by the Labour Officer Baddi, closed the conciliation proceeding on 16.10.2020, on the ground that the workman has not been retrenched from the

service by concerned management. The services of the petitioner were terminated on the basis of so called enquiry report. The respondent management resorted all tactics to pressurize the petitioner to withdraw the criminal case against the officials of the management. The entire proceedings are unilateral without following the principal of natural justice. The dismissal of petitioner from job was pre determined. The dismissal of the petitioner deserves to be declared illegal, null and void. The petitioner was subjected to be victimization simply for the reason that she raised the voice against the criminal activities at work place. After issuance of the demand notice more than 45 days have been elapsed, but the petitioner did not receive any response from the Appropriate Government. Hence, the petitioner has filed the present petition. The petitioner right from the date of her appointment had worked in the respondent management uninterruptedly without any break with sincerity and nothing adverse has been found against her till the incident dated 21.06.2020. The atmosphere of the company is not conducive for the working women as many times they have to undergo to the abuse and teasing in the hands of the male official. Prior to this incident the same incident was happened with her daughter whereupon the Factory Manager given a written assurance to the daughter of the petitioner that in future they shall not create any trouble to the petitioner. With these averments the petitioner prayed that the dismissal order dated 24.11.2020 coupled with so called enquiry report to be declared illegal, null and void. Services of the workman may kindly be reinstated *w.e.f.* 22.06.2020 with full back wages alongwith all consequential benefits.

3. The claim of the petitioner is resisted and contested by the respondent management by filling reply in which they have taken the preliminary objections that the applicant has not come with clean hands as she has mis-led the facts in distorted manner in order to mislead this Hon'ble Court and to form wrong opinion against the management and company. The petitioner during the course of the employment committed an act of gross misconduct during duty hours and consequently her service was suspended. The enquiry was conducted, but the applicant did not actively participated in the enquiry and she made the false allegation of molestation and additional plea was also taken that the petitioner indulged in grave misconduct during the course of employment in the premises and an impartial inquiry was conducted against her by affording full opportunity to contest the inquiry and the petitioner attended the enquiry proceeding in three sittings and after that did not appear even full opportunity was given to cross examine the witnesses of the respondent management.

4. On Merits, it is submitted that the respondent unit is a Spinning Unit where about 450 persons used to work in a shift at a time and no employee can dare even to think of molesting a women in such situation. On 21.06.2020, the applicant had come to attend her duty in her regular shift at around 8:30 A.M. and she asked her shift officer to leave her for having breakfast at 9:00 A.M. because as per her, it was eclipse on that day and she was allowed, but she did not return back to resume her duty and sat in female washroom area. Upon being asked to resume her duty she misbehaved with the female employee and created nuisance in the production area. The female officers tried their level best to pacify her, but she was adamant. The police was called and police arrived at 2:30 P.M. The applicant started talking about unrelated things and without explaining anything to the police, the applicant left the unit and she never alleged incident of molestation to the female police officer at that time which amounted to gross misconduct. On 22.06.2020, the applicant was put under suspension for major misconduct and not allowed to enter the factory premises and the applicant refused to accept her suspension letter on 22.06.2020 and harassed the concerned HR and female security guard of the respondent company and called bad names to the senior officers and threatened them to wrongfully involve them in civil and criminal litigations. The local Police was called as the applicant being created a scene on the main gate of the factory along-with her daughter and tried their level best to tarnish the reputation of the respondent company. The police recorded statement of applicant on 22.06.2020 but she could not complained of made even any single allegation on her by any employee of respondent company to Police. The present complained is filed only to harass the employee. The complaint was filed before the Ld. Additional

Chief Judicial Magistrate, Nalagarh and subsequent FIR was registered. After the refusal of the suspension letter by the applicant for her gross misconduct, the copy was sent through registered post to her on her permanent and present address on 22.06.2020 with information to the Labour Officer, Baddi. The applicant was chargesheeted by the respondent as per provisions of the Standing Orders of the company on 25.06.2020 and she was called upon to file the reply but the applicant filed a wrong and illegal demand notice under section 2-A of the Industrial Dispute Act 1947, with the Labour-cum-Conciliation Officer at Baddi. After receiving the demand notice, the Labour Officer, Baddi called the Senior Officer of management for conciliation on 08.07.2020. Mr. Mohan Jhangra appeared before the conciliation officer and demanded the copy of demand notice which was supplied to him on 25.06.2020 and also submitted that the service of the applicant has not been terminated or dismissed hence the demand notice, is premature. The petitioner was indulged in grave misconduct as such the management chargesheeted her as per standing order and she was directed to file the reply. The conciliation officer directed the factory manager to file the reply of the letter dated 25.06.2020 and on 24.07.2020, the management filed the detailed reply to the letter of the applicant and annexed the copy of suspension letter dated 22.06.2020 and chargesheet dated 25.06.2020 along-with its documents. The copy of the reply and the document supplied to the applicant take time to file the rejoinder of reply and letter of proceeding initiated by the conciliation officer was dropped but the applicant has not been filed any reply to the chargesheet despite time was given to her and it was presumed that the delinquent has admitted all the charges leveled against her and thereafter the outsider was appointed at the factory to conduct the domestic inquiry who followed the entire procedure by giving full opportunity to the applicant to contest the proceedings. The applicant brought her daughter as defense assistant as the outsider cannot assist the delinquent. The inquiry officer tried to narrate the procedure to petitioner and her daughter and told that they have to sign on the inquiry proceeding and they are free to cross examine the witnesses but the applicant did not co-operate with the inquiry officer and left the place without signing the inquiry proceedings. Thereafter, the enquiry officer again issued letter/notice to the applicant to take part in enquiry proceedings for 31.08.2020, on which date the applicant appeared before the enquiry officer with her daughter. The enquiry officer asked the applicant that she can engage any co-worker as her defense assistant and thereafter, the enquiry was fixed for 09.09.2020, for the evidence of the respondent management but the petitioner again skipped and did not appear. The information was given through e-mail address and through registered post on 25.09.2020. The inquiry officer waited for the applicant but she did not turn up and last opportunity was given to take part of the proceeding for 14.10.2020. The information was duly served upon her but she failed to appear before the enquiry officer, hence, *ex-parte* order was made against her and report was submitted on 25.10.2020 to the management. Thereafter, the management had issued 2nd show cause notice-cum-propose penalty letter dated 28.10.2020 to the applicant but she again showed her adamancy and filed a reply to the second show cause notice-cum-proposed penalty letter and accordingly the dismissal letter was issued on 24.11.2020 by paying her full & final dues. The dismissal of the applicant is as per the law and equivalent to the wrong done by the petitioner. With these averments, the respondent prayed for dismissal of the claim petition.

5. No rejoinder was filed.

6. In order to prove their respective contention both the parties were adduced their oral as well as documentary evidence on record.

7. In order to prove preliminary issue, the petitioner Smt. Anita Devi appeared into the witness box as PW-1 and tendered into evidence her affidavit Ex. PW-1/A, wherein she has re-affirmed the allegations as made in the claim petition. She also tendered into evidence the copy of FIR Ex. PW-1/B, report under section 12(4) of the Industrial Dispute Act Mark P-1, dismissal letter Mark P-2, Enquiry report Mark P-3, demand notice Mark P-4, letter Mark P-5 and postal

receipt Mark P-6. In cross-examination, she has submitted that she was discharging her duty from 21.06.2019. She denied that she was asked by co-worker Tejinder Kaur to work on machine but she refused. She further denied that she created nuisance in the factory but admitted that the Police was called by the management inside the factory on the same day. She was not seen in photographs mark RX 1 and mark RX 2 and her statement recorded by the police on 21.06.2020 and police also asked her to get proper treatment for her arm and her statement mark RX 3 was not recorded nor bear her signature. She denied that the management has given show cause notice on 22.06.2020 for creating nuisance in the factory. She denied that she is visible in photographs mark RX 5 & RX 6. She also denied that she climbed up in the factory gate and stopped the entry/exit of the factory. She denied that DDR No. 49 Mark RX 10 was recorded by the police. She raised the demand notice before Labour Officer on 25.06.2020 and reply was filed by the management. She denied that she was asked by the Labour Officer that her services were not terminated and directed to file the reply to the chargesheet. She denied that the copy supplied to her by the management. Self-stated the chargesheet supplied by the Labour Officer and she did not file any reply to the chargesheet. She admitted that she was asked to join the enquiry proceedings through registered post and e-mail but she refused to join the inquiry. She denied that she asked the security to allow my son and daughter to appear before the enquiry officer but denied that her daughter shall join to inquiry. She admitted that all the proceeding had conducted in the videography but showed ignorance that Ms. Reena Dhiman was management representative. She admitted that women security was also present at the factory gate. She denied that the procedure for conducting the enquiry was explained to her but verbally submitted that enquiry officer is the son of Sh. Rajeev Sharma who is counsel in this case. She denied that the enquiry was conducted ex-parte against her. She denied that the complaint under section 107/150 CRPC was presented against her in the Court of SDM Nalagarh. She admitted that her medical examination was conducted. She denied that she was not subjected to any sexual harassment at work place and she did not report the matter till 24.07.2020 and she revealed the fact first time while filling the rejoinder on 24.07.2020 and FIR 41/20 was culminated into the conciliation report. She admitted that Spinning Mills were having 10 factories now left with 6 factories and 2500 female workers are doing work. She denied that there is no complaint regarding sexual harassment of female worker in the company premises. She has no knowledge that there is hostel facilities for working women in these factories and Ms. Reena Dhiman is the Chief Welfare Officer for women. She denied that she made a concocted story of sexual harassment in order to save her skin from the allegations of the chargesheet.

8. In order to rebut the evidence of the petitioner, the respondent examined Sh. Ranvijay Singh, Manager Legal as RW-1, who placed on record his affidavit Ex. RW1/A, wherein he has reiterated almost all the averments as made thereto in the reply filed by the respondent. He also placed on record complaint Ex. RW1/B (3 leaves), resolution of the Board of Directors Ex. RW1/C, chargesheet Ex. RW1/D (12 leaves), letter of commencement of enquiry Ex. RW1/E (4 leaves), Police record through RTI Ex. RW1/F (13 leaves), second show cause notice Ex. RW1/G (5 leaves), dismissal letter Ex. RW1/H (4 leaves), reply to demand notice Ex. RW1/J (10 leaves) and photographs Ex. RW1/K-1 to Ex. RW1/K-8. In cross examination, he stated that the petitioner was working as Spinning Operator since 2017 on the monthly salary of ₹ 9,000/-. The petitioner was never involved in any misconduct prior to 21.06.2020. There was a Sexual Harassment Committee in the factory premises but he was not aware the name of the Chairperson. He denied that there is no committee in the factory. He admitted that he is working as Legal Manager and looking-after the legal work of the factory and production work was being looked after by the production department. Self-stated that the information pertaining to various happenings in the production department are constantly shared by the production department with him. He admitted that Sh. Ashok is working in the production department but denied that Sh. Ashok had tried to molest Anita Devi during working hours on 21.06.2020. Self-stated that 400-500 people are working together at the same floor of the factory. He admitted that Ex. PW1/B is the copy of FIR regarding sexual harassment and he cannot told work timing of the petitioner but it started from

6:00 A.M. There are three shifts and morning shift ended at 2.00 P.M. He denied that the petitioner revealed the incident to Sh. T.K. Singh (Shift Officer) and Sh. Mohan Jhangra (Factory Manager). He denied that no enquiry was conducted regarding the sexual harassment and petitioner remained in the factory premises upto 2.30 P.M. Preliminary report was prepared by Mr. TribhuvanYadav and Domestic Inquiry was conducted by Sh. Hardesh Sharma. He was never engaged as an enquiry officer earlier in any case. Shri Hardesh Sharma is the son of Shri Rajeev Sharma. He denied that Hardesh Sharma was appointed on the recommendation of his father Shri Rajeev Sharma. Self-stated that Sh. Hardesh Sharma is practicing as an independent Advocate at various Courts including Nalagarh. The venue of inquiry was conducted on Conference Hall, which was decided by the factory management. He admitted that to reach inside the factory, main gate entry is compulsory. He further admitted that the petitioner was suspended on 22.06.2020. He admitted that the gate pass is essential for going outside during working hours. He denied that the respondent has not followed the principles of natural justice for holding domestic inquiry. He denied that the enquiry has not been conducted as per the Certified Standing Orders of the factory.

9. RW-2 Shri Hardesh Sharma, Advocate who was the Enquiry Officer placed on record his affidavit Ex. RW2/A, notice of the inquiry Ex. RW2/B to Ex. RW2/D and inquiry proceeding, statement of witness and documents Ex. RW2/E (14 leaves), letter of the petitioner daughter Ex. R2/F, enquiry report Ex. RW2/G (18 leaves) and certificate of section 65-B of Evidence Act. In cross-examination, he showed ignorance that the factory provided the local address of the petitioner and that she is residing in village Bhoop Nagar Baddi. He admitted that he is not personally posted the notice of enquiry to the petitioner. Self-stated that the notice was handed-over to the respondent to post the same. He admitted that there is no postal receipt on record. The inquiry is conducted on conference hall and it was decided for the convenience of both the parties. He denied that he was appointed as an enquiry officer at the instance of his father, who was defense lawyer of the company. He denied that he did not inform the petitioner regarding the inquiry. Self-stated that initially the petitioner participated in the enquiry proceedings along with her daughter as defense assistant and her presence was marked in the enquiry proceedings Ex. RW2/F. He denied that the petitioner had not put her signatures on RW2/F. He denied that he prepared the false report and not given due opportunity to the petitioner. He denied that petitioner never participated in the inquiry. He denied that no letter was issued to the petitioner on her local address.

10. I have heard both the counsels on these preliminary issues and scrutinized the record with minute care and caution.

11. At the very inception, the word “misconduct” is a generic term while in subordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

12. In the instant case, the admitted facts are that the petitioner was the employee of the respondent company and she filed the demand notice before Labour Officer and proceeding were

initiating and both the parties appeared before him. By filing the reply by the management, it is stated that the services of the petitioner were not terminated. The petitioner has been charge-sheeted for major indiscipline in the factory. It has also come on the record that on 21.06.2020, some incident had taken place inside the Factory and shift Manager Shri T.K. Singh, made the complaint against the petitioner and it was forwarded to the Factory Manager for disciplinary action. It has also come on the record that on the same day, the Police came in the factory premises and Investigating Officer of P.S Baddi, has record the statement of Smt. Anita Devi, in the factory, which is clear from the document placed on record as Ex. RW1/F, wherein she had not made any allegation regarding any sexual harassment on that day. It has also come on record that the proceeding under section 107/151 Cr. P.C. was initiated against the petitioner and her daughter. No doubt the petitioner was medically examined by the Investigating Officer as she has getting pain on her arm and she disclosed to the Doctor that she had been beaten by the Manager of the factory and thrown on ground and she sustained injury. It has also come on record that the petitioner was chargesheeted by the respondent management and Shri Hardeh Sharma, Advocate was appointed as an Enquiry Officer. The petitioner also admitted that initially she joined the enquiry proceedings and thereafter she did not turn up. As per the perusal of the file, the notices were given to the petitioner to join the enquiry proceedings by the inquiry officer, which were placed on record as Ex. PW2B/C and RW/T but despite that she did not turn up. The petitioner was asked through registered post to join the enquiry but she did not turned up. Initially she joined the enquiry proceedings along-with her daughter and Ex. RW2/E was duly signed by her daughter, whereby it has been written that she heard the entire proceedings and the copies were given to the petitioner. Meaning thereby, that the petitioner was fully aware about the proceeding and she appeared along-with her daughter on 31.08.2020, even she moved an application Ex. RW2/F that she do not want to appoint any defense assistant except her daughter and permission was granted to her but despite that she did not appeared before the enquiry officer nor filled any reply to the chargesheet. The petitioner has filed the complaint before the ACJM, Nalagarh that she has been sexual harassed by the co-worker in the premises, who sent the complaint to the Police for registration of the FIR and accordingly the FIR No. 41/2020, was registered on 24.06.2020. Meaning thereby that when her statement was recorded on 21.06.2020 by the Investigating Officer in the factory premises, she did not disclose any fact regarding the sexual harassment to her but after the receipt of the charge-sheet on 24.06.2020, she had made this story which appears to be an after thought.

13. The Ld. Csl. respondent also submitted that the enquiry was conducted as per regulation of management. It has also come on the record that the petitioner refuses to work on machine when her supervisor directed to work on the machine of co-worker. The demand notice was also got issued by the petitioner to the management and in its reply the management admitted that petitioner is not terminated from the job and accordingly that proceeding were dropped before the Labour Officer. Therefore, from the entire evidence, cross-examination, documents and report of the enquiry officer, it is clear that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings and it was the petitioner who had not intentionally appeared before the enquiry officer.

14. Verily, from the attendant facts and circumstances of the case, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the modal standing order by following the principles of natural justice. As a matter of fact all the formalities have duly been complicated with by the respondent company. Since, the enquiry conducted by the enquiry officer by following the principles of natural justice and the petitioner has been given full opportunity to file the reply and defend her case in the enquiry, hence, the preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

15. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

16. The Hon'ble Supreme Court in *Kurukshetra University Vs. Prithvi Singh* (2018) 4 SCC 483 has held under para 25 and 26, as under: —

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed *supra*.

17. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* (1972) 1 SCC 595 has held as under:—

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'tile, order of termination, dismissal or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71".

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo-moto to adduce evidence was not accepted, in the circumstances of that case".

18. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravartys Britannia Biscuit Co.Ltd. & Anr. decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

19. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

20. Before proceeding further, I would like to invite the attention of the parties to the provisions of **Section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:—

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

21. In all fairness, by now it is well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom.

22. Section 11-A of the Industrial Dispute Act is applicable in the cases of dismissal or discharge of a workmen on the allegations that the management have not properly conducted the enquiry, victimization and malafides or unfair labour practice, but ,in the instant case there is no such evidence on record. In the present case, section 11-A is not applicable, in view of the law laid down by **Hon’ble Apex Court in AIR 2006 SCC 2208**. The relevant para 16 is reproduced as under: —

“The Labour Court had earlier held that the enquiry was properly held and there was no violation of the principles of natural justice and that the findings were not perverse. The vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. If enquiry is fair and proper, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section 11A of the Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the Section itself. Before the introduction of Section 11A in *Indian Iron and Steel Co. Ltd. v. Their Workmen* [(1958) SCR 667] this Court held that the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the Management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc. on the part of the management. There is no allegation of unfair labour practice, victimization etc. in this case. The powers of the Labour Court in the absence of Section 11A is illustrated by this Court in *Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management* [(1973) 1 SCC 813]. When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimization or malafides or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11A is not applicable, Labour Court has no power to re-appraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry.”

23. The facts narrated and discussed hereinabove clearly show that the gravity of the misconduct has been duly considered by the disciplinary authority while imposing sentence and it is concluded that the punishment imposed upon the petitioner *i.e* dismissal from service, is proportionate to the gravity of misconduct levelled against the petitioner. The petitioner is not entitled to any relief from this Court. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 25th day of September, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SH. KRISHAN KUMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 97 of 2019

Instituted on : 01-06-2019

Decided on : 27-09-2023

Nirmala Devi w/o Shri Ram Lal r/o Ward No.1 Deonghat, P.O. Saproon, Tehsil & District Solan, H.P. . . *Petitioner.*

Versus

1. The Executive Engineer, HPSEBL, Saproon, Solan, Tehsil & District Solan, H.P.
2. The Assistant Engineer, HPSEBL (LMTC), Deonghat, Solan, Tehsil and District Solan, H.P. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri S.R. Pandyar, Advocate

For the Respondents : Shri Surender Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:—

“Whether the action of the employers *i.e* (i) The Senior Executive Engineer, Electrical Division, HPSEBL, Solan-173211 (ii) The Assistant Engineer LMTC Sub-Division

HPSEBL, Solan, to deprive the service benefits of Smt. Nirmala Devi w/o Shri Ram Lal, r/o Ward No.1 Deonghat, P.O. Saproon, Tehsil & District Solan, H.P. working in the office of LMTC Sub-Division HPSEBL, Deonghat, Solan, who worked as Part Time Sweeper *w.e.f.* 11.06.1998 to 30.06.2008 (more than 10 years) to become a daily wages worker as per approval of the Secretary, HPSEB, Shimla *vide* Notification No. HPSEB (Sett-PO/369-1(PTS) 2008-09-121560-61 dated 12.01.2009 is proper and justified? If not, to what service benefits in terms of above notification and consequential relief the above aggrieved workman is entitled to from the above employers?"

2. In nutshell, the case of the petitioner is that she was working with the office of the LMTC HPSEBL Deonghat, Solan as Safai Karamchari since 11.06.1998 and doing her work with sincerely. Now, the petitioner is daily wage worker with the department and rendering her services with proper care and caution as per the directions of the office incharge. The petitioner had completed more than 21 years of continuous service with a minimum 240 days in calendar year and she had completed the minimum period required as per the policy of the State Government as well as respondent department for work-charge employee and entitled for appointment to be a regular employee. The petitioner is doing her job as daily wage worker and she had completed 21 years of continuous service on 11.06.2019. As per the various pronouncements and settled law of the Apex Court, the services of the petitioner is required to be regularized in the light of the policy as well as the judgments passed by the Courts. The petitioner has also submitted the detailed representation for the regularization and for all benefits as due under law for her but till date nothing has been considered positively or no response by the side of the respondents. The copy of the representation has already submitted to the concerned officers through proper channel. However, one letter has been issued by the office of the Joint Labour Commissioner and another letter has been issued by the office of Chief Engineer HPSEB (OP) South, Shimla. The petitioner has been wilfully ignored for the regularization of her services/promotion and other consequential benefits of job till the filing of claim petition, whereas, the other employees/workers have been regularized, who joined the department with the petitioner. The petitioner is only lady in the office, who is being deprived for the necessary benefits on behalf of the HPSEBL, hence, the present claim.

3. The claim of the petitioner is resisted and contested by the respondent by filing reply in which it has been submitted that the applicant is not entitled for the relief as claimed as she suppressed the material facts from this Court. The petitioner had also filed an application before the Inspector-*cum*-Labour Conciliation Officer and prayed for the regularization of her services and claimed all benefits of service on completion of 10 years in service as per the regularization policy of the H.P. Government. As per the record maintained by the respondent department, the petitioner was initially engaged as part-time sweeper on 11.06.1998 @ ₹ 5.70/- per hours as prevailing DC rates in pursuance of instructions of the Secretary HPSEBL conveyed *vide* letter No. HPSEBL (Sectt.)18-7-5/98-125158-388 dated 22.03.1998. The petitioner remained engaged as part-time sweeper in the office of Assistant Engineer LMTC, Solan till 31.03.2008. It is submitted that the Secretary *vide* letter No. HPSEBL (Sectt.) PO/369-1 (PTS) 2008-9-121560-61 dated 12.01.2009, had conveyed the approval for conversion of part-time workers who have completed 10 years or more service upto 30.06.2008 purely on daily waged basis and these workers were to be engaged purely on daily wages basis against the vacancies of sweeper-*cum*-SCC in relaxation of age and qualification. The petitioner had only completed 9 years and 9 months as on 30.06.2008 instead of 10 years period as part-time workers, hence, she was not recommended to be engaged on daily wage basis and she remained as part-time sweeper in the office of the respondent till 31.03.2008. Thereafter, the petitioner had worked as part-time sweeper on work order basis in the office of Assistant engineer, LMTC, HPSEBL, Solan *w.e.f.* 01.04.2008 till 22.03.2015 and as per the letter of Secretary HPSEBL dated 11.03.2015 had conveyed the approval for conversion of part time worker who have completed eight years or more upto 31.03.2014. These workers were to be

engaged purely on daily wages basis against the vacancies of sweeper-cum-SCC on the other terms and conditions. Accordingly, in pursuance to the directions conveyed *vide* letter dated 11.03.2015, the services of the applicant have been converted into daily wages basis sweeper and posted in Electric Division Solan/CE South *w.e.f.* 23.03.2015 subject to furnishing undertaking *vide* affidavit dated 24.03.2015, wherein under para no. 7, she had specifically undertaken and stated that “ I shall have no claim whatsoever for the past services rendered by me in the HPSEBL and that the present offer is in full and final settlement of all my claims, if any”. The petitioner joined the services on the post of sweeper on daily wage basis voluntarily and without any protest on 23.05.2015. These facts have been concealed by her and on this ground, her claim is liable to be dismissed. The applicant is working as sweeper as on date on daily wage basis and is posted in the office of Assistant Engineer, LMTC Solan. It is further submitted that the petitioner had never worked for eight hours with the respondent while working as part-time worker, hence, her claim is totally false, baseless and liable to be rejected. The petitioner was deployed on part-time basis as sweeper at LMTC, Solan on and *w.e.f.* 11.06.1998 and continued as such on and *w.e.f.* 31.03.2008 and completed 9 years 9 months and 20 days and there was a policy of 10 years to convert those part time sweepers into daily wage basis who have completed 10 years but in the present case there is a shortage of 2 months and 10 days to complete 10 years, hence, her services could not be converted into daily wage basis. The Chief Engineer (OP) South HPSEBL, Shimla *vide* its letter dated 12.03.2015 has recommended her name to convert her services into daily wage basis and as such her services were brought on daily wage basis *w.e.f.* 11.03.2015 as there was 8 years policy existing during this period. The respondent prayed for the dismissal of the claim petition.

4. By filing re-joinder, the petitioner re-affirmed her own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed by my Ld. Predecessor on 21.01.2020.

1. Whether the action of the respondent in appointing the petitioner on daily waged basis after completion of 10 years of service as a part-time sweeper is proper and justified? If not, to what benefits the petitioner is entitled to? . . . *OPP*.
2. Whether the petitioner is not entitled to any relief as she has not approached this Court with clean hands and concealed material facts as alleged? If so, its effect? . . . *OPR*.
3. Relief

6. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No. 1 : Yes

Issue No. 2 : No

Relief : Reference petition is answered in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2 :

9. Being interlinked and correlated, both these issues are taken up together for discussion and decision.

10. The contention of the petitioner is that she was daily waged worker with the respondent and as per the notification of the Secretary dated 12.01.2009, she had completed 10 years of service as part-time sweeper and entitled for the daily wages appointment but the respondent had ignored and not considered her case and she was made daily wage worker in the year 2015 on the basis of the letter issued by the Secretary dated 11.03.2015.

11. On the other hand, the respondent disputed the claim of the petitioner. According to them, in the year 2008, the petitioner had completed only 9 years and 9 months as on 30.06.2008 instead of 10 years period and later on stated that she had not completed 10 years as such on and *w.e.f.* 31.03.2008 and only completed 9 years 9 months and 20 days and there was a delay of 2 months and 10 days to convert her services into daily wage basis.

12. In order to substantiate its case, the petitioner had appeared into the witness box as PW-1 and placed on record her affidavit Ex. PW-1/A, wherein she re-affirmed the claim put forth in the claim petition and also placed on record documents Mark PA and Mark PB. In cross-examination, she admitted that she had been regularized in the year 2020. She admitted that she was earlier working as part-time and thereafter she became a daily wage worker in the year 2015. She denied that she tendered an affidavit in favour of the respondent that she is fully satisfied.

13. In order to rebut, the respondent has examined Shri Rajinder Kumar, Assistant engineer, LMTC, HPSEBL, Solan as RW-1, who placed on record his affidavit Ex. RW-1/A, wherein he has re-affirmed the contents made in the reply. He has also placed on record affidavit of petitioner dated 24.03.2015 Ex. RW-1/B, application for attestation of affidavit Ex. RW-1/C, undertaking Ex. RW-1/D, regularization order Ex. RW-1/E, approval Ex. RW-1/F, affidavit Ex. RW-1/G, part-time to daily wages Ex. RW-1/H, joining report Ex. RW-1/J, office order Ex. RW-1/K and approval Ex. RW-1/L. In cross-examination, he admitted that the petitioner was engaged as part-time sweeper on 01.06.1998 and order awarded was issued on 11.06.1998. He also admitted that at the time of engagement there was no qualification criteria and petitioner is only able to sign being illiterate. He further admitted that the petitioner has completed 10 years on 01.06.2008. He admitted that the petitioner became daily wage worker on completion of 10 years on 01.06.2008, as per the policy of Government. He further admitted that the petitioner was made daily wage worker on 2015. Volunteered that after completing the mandays chart of the petitioner she was found to be putting less than 10 years of the services *i.e* 9 years 9 months. He admitted that the colleagues of the petitioner were made daily wage workers in 2008. He denied that the signatures of the petitioner were obtained on blank papers. He further admitted that at the time 8 years of service was required for regularization and the petitioner is to be regularized in 2016. He also admitted that the petitioner is entitled for arrears for daily wage period or regularized period.

14. The admitted facts are that the petitioner was appointed as part-time sweeper *w.e.f.* 11.06.1998 and still she is in the job and regularized in the year 2020. There is no dispute that the respondent had received letter No. HPSEB (Sectt)/PO/369-1(PTS)/2008-09-121560-61, dated 12.01.2009, sent by the Secretary, HPSEBL. The letter clearly shows that the conversion of the part-time workers having completed 10 years of service upto 30.06.2008, purely on daily waged basis and *w.e.f.* 01.01.2009. As per the statement of the respondent, it is stated that the petitioner was engaged as a part-time sweeper on 01.06.1998 and she had completed 10 years of service on

30.06.2008. The respondent had calculated the service period of the petitioner upto 31.03.2008 and accordingly, the respondent claimed that the petitioner had completed only 9 years 9 months and 20 days and there was a policy of 10 years but the contents of the letter dated 12.01.2009, clearly shows that the Board has given its approval for the conversion of those part-time workers into daily wage basis who have completed 10 years or more as on 30.06.2008 but in the case of the petitioner the respondent had calculated the service period of the petitioner only upto 31.03.2008, though, the direction was given by the higher officials that the workers who have completed 10 years upto 30.06.2008, be converted into daily wage worker *w.e.f.* 01.01.2009. There was no explanation except that the petitioner had completed only 9 years 9 months and 20 days of service as part-time worker upto 31.03.2008. Though, this was not the order of the Secretary of HPSEBL *vide* letter dated 12.01.2009. There is no dispute that the services of the petitioner were regularized in the year 2020 and converted into daily wage worker in the year 2015, when the policy of 8 years *vide* letter dated 11.03.2015 was received by the respondent and only then she was considered and appointed as daily wager. There is no plausible explanation by the respondent to the effect that when the petitioner had completed 10 years of service as part-time worker on 30.06.2008 as per the letter dated 12.01.2009, why she was debarred from her legitimate right to convert as daily wage worker.

15. Therefore, from my above discussion, I have no hesitation in holding that the action of the employers/respondents to deprive the service benefits of petitioner working in the office of LMTC Sub-Division HPSEBL, Deonghat, Solan, who worked as Part-Time Sweeper *w.e.f.* 11.06.1998 to 30.06.2008 (more than 10 years) to become a daily wages worker as per approval of the Secretary, HPSEB, Shimla *vide* notification No. HPSEB (Sett-PO/369-1(PTS) 2008-09-121560-61 dated 12.01.2009 is improper and unjustified. Hence, the petitioner is held entitled for conversion of daily wage worker *w.e.f.* 01.09.2008, in terms of letter dated 12.01.2009 and thereafter for regularization as per the policy of the State Government with all consequential service benefits. Both these issues are answered accordingly.

Relief :

16. As a sequel to my above discussion and finding on issues no.1 and 2, the claim of the petitioner is allowed. Resultantly, the respondents are directed to convert the services of the petitioner as daily wage worker *w.e.f.* 01.09.2008, in terms of letter dated 12.01.2009 and thereafter for regularization as per the policy of the State Government with all consequential service benefits. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 27th day of September, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

In the Court of Sh. Rakesh Kumar Sharma, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate, Sujampur, Distt. Hamirpur (H. P.)

In the matter of :

1. Bibedh Kumar age 31 years s/o Bhoop Singh, r/o Village Duhak, P.O. Chauri, Tehsil Sujampur, District Hamirpur (H.P.).

2. Aditi age 25 years d/o Late Sh. Bhim Bahadur, r/o Village Chadyana, P.O. Prag, Tehsil Kotkhai, Distt. Shimla (H.P.) .. Applicants.

Versus

The General Public

.. Respondent.

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Bibedh Kumar age 31 years s/o Bhoop Singh, r/o Village Duhak, P.O. Chauri, Tehsil Sujanpur, District Hamirpur (H.P.) and Aditi age 25 years d/o Late Sh. Bhim Bahadur, r/o Village Chadyana, P.O. Prag, Tehsil Kotkhai, Distt. Shimla (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 25-09-2023 at Mata Mandir Tauni Devi at Bamson at Tauni Devi, District Hamirpur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objections personally or in writing before this court on or before 14-11-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 27-10-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H.P.).*

In the Court of Sh. Rakesh Kumar Sharma, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate, Sujanpur, Distt. Hamirpur (H. P.)

In the matter of :

1. Ravinder Kumar Bhatta aged 33 years s/o Sh. Partap Chand Bhatta, r/o House No. 1752, New Indira Colony, Mani Majra (r) Chandigarh-160101.

2. Jyoti aged 25 years d/o Ramesh Chand, r/o Village Galota, P.O. Chauri, Tehsil Sujanpur, District Hamirpur (H.P.) .. Applicants.

Versus

General Public

.. Respondent.

Subject.— Notice of the Intended Marriage.

Ravinder Kumar Bhatta aged 33 years s/o Sh. Partap Chand Bhatta, r/o House No. 1752, New Indira Colony, Mani Majra (r) Chandigarh-160101 and Jyoti aged 25 years d/o Ramesh

Chand, r/o Village Galota, P.O. Chauri, Tehsil Sujanpur, District Hamirpur (H.P.) have filed an application in the court of undersigned under section 5 of Special Marriage Act, 1954 in which they stated that they intend to solemnize their marriage within three months of calendar.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 02-12-2023. The objections received after 02-12-2023 will not entertained and marriage will be registered accordingly.

Issued today on 02-11-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, District Hamirpur (H.P.).*

**In the Court of Sh. Rakesh Kumar Sharma, H.A.S., Marriage Officer-cum-Sub-Divisional
Magistrate, Sujanpur, Distt. Hamirpur (H. P.)**

In the matter of :

1. Jitender Kumar aged 33 years s/o Sh. Dharam Singh, r/o V.P.O. Patlander, Tehsil Sujanpur, District Hamirpur (H.P.).

2. Soni Bhatia aged 22 years d/o Mohinder Singh, r/o Village Nakhred Souran, P.O. Kuthera, Tehsil & District Hamirpur (H.P.) . . *Applicants.*

Versus

General Public

. . *Respondent.*

Subject.— Notice of the Intended Marriage.

Jitender Kumar aged 33 years s/o Sh. Dharam Singh, r/o V.P.O. Patlander, Tehsil Sujanpur, District Hamirpur (H.P.) and Soni Bhatia aged 22 years d/o Mohinder Singh, r/o Village Nakhred Souran, P.O. Kuthera, Tehsil & District Hamirpur (H.P.) have filed an application in the court of undersigned under section 5 of Special Marriage Act, 1954 in which they stated that they intend to solemnize their marriage within three months of calendar.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 27-11-2023. The objections received after 27-11-2023 will not entertained and marriage will be registered accordingly.

Issued today on 27-10-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, District Hamirpur (H.P.).*

